

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

Myriam E. Torres Roman, et al.,

Plaintiffs,

v.

Municipio de Bayamon, et al.,

Defendants.

CASE NUMBER: 98-1775 (HL)

MOTION

Date Filed: 3/13/00 Docket #75 [x] Plffs [] Defts

Title: Motion for Relief from Judgment and Order

Opp'n Filed: Docket #

RECEIVED & FILED
U.S. DISTRICT COURT
JUAN M. PRADO
03 MAR 29 AM 10:51

ORDER

Contrary to Plaintiffs' contention, this Court was not divested of jurisdiction to grant Defendants' Motion for Reconsideration by virtue of Defendants' filing of a notice of appeal. Defendants' motion went directly to the merits of the case, thus allowing the Court to treat the motion as having been filed under Fed. R. Civ. P. 59(e). See Allan Ides, The Authority of a Federal District Court to Proceed After a Notice of Appeal Has Been Filed, 143 F.R.D. 307, 318. Such motions constitute an exception to the so-called transfer-of-jurisdiction principle. See Fed. R. App. P. 4(a)(4); 143 F.R.D. 307, 317; Charles W. Adams, The Timing of Appeals Under Rule 4(a)(4) of the Federal Rules of Appellate Procedure, 123 F.R.D. 371, 384.

Plaintiffs' Motion for Relief from Judgment is well-taken by the Court on one issue, however. Plaintiffs' failure to include an exhibit page that creates a genuine issue of material fact as to whether the Defendants actually consulted with the District Attorney should not result in the final disposition of the case in Defendants' favor at this stage. Plaintiffs' inclusion in this motion of this previously-omitted material is sufficient to create a genuine issue of material fact on this matter. Because there is now a factual dispute as to whether Defendants' actually consulted with the District Attorney, the Court must vacate its judgment of dismissal on the ground of qualified immunity. The Clerk of the Court shall reopen this case.

The parties are hereby ordered jointly to submit a motion setting forth potential dates for the trial of this case.

Date 3/27/00

HECTOR M. LAFFITTE
Chief U.S. District Judge

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